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Attorneys for HANSEN BEVERAGE COMPANY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HANSEN BEVERAGE COMPANY, a Delaware corporation,

Plaintiff,

v.

INNOVATION VENTURES, LLC dba LIVING ESSENTIALS, a Michigan corporation,

Defendant.

CASE NO. 08-CV-1166 IEG (POR)

OBJECTIONS TO EVIDENCE SUBMITTED IN SUPPORT OF LIVING ESSENTIALS' *EX PARTE* APPLICATION FOR DISCOVERY

Date: August 28, 2008
Time: 2:00 p.m.

Hon. Louisa S. Porter

EVIDENTIARY OBJECTIONS TO DEFENDANT'S *EX PARTE* APPLICATION

Hansen Beverage Company objects to evidence Innovation Ventures, LLC dba Living Essentials submitted in support of its *ex parte* application:

Exhibit to Declaration of Nathan R. Hamler	
Objectionable Evidence	Basis for Objection
Exhibit B to Hamler Declaration: Hansen Natural Corp. Q2 2008 Earnings Call Transcript	Lack of personal knowledge (F.R.E. 602); Lacks authentication or identification (F.R.E. 901); (double) hearsay (F.R.E. 802). Mr. Hamler does not establish any evidentiary foundation for this exhibit.
***Ex Parte* Application**	
Objectionable Evidence	Basis for Objection
"Over the last four (4) years, Living Essentials has sold a 2 oz. supplement under the 5 HOUR ENERGY® Trademark as illustrated below." Pg. 3 lines 3-4.	Lack of personal knowledge (F.R.E. 602). Defendant does not establish any evidentiary foundation for this assertion.
"The 5 HOUR ENERGY® has been widely successful." Pg. 3 line 17.	Lack of personal knowledge (F.R.E. 602). Defendant does not establish any evidentiary foundation for this assertion.
"In just four years, revenue from the sales of the 5 HOUR ENERGY® product has exceeded $150,000,000." Pg. 3 lines 17-18.	Lack of personal knowledge (F.R.E. 602). Defendant does not establish any evidentiary foundation for this assertion.
"Living Essentials has spent over $40,000,000 in advertising and marketing in connection with the 5 HOUR ENERGY® product." Pg. 3 lines 19-20.	Lack of personal knowledge (F.R.E. 602). Defendant does not establish any evidentiary foundation for this assertion.
"Living Essentials is the market leader in this	Lack of personal knowledge (F.R.E. 602).

2 oz. liquid, supplement market." Pg. 3 line 21.	Defendant does not establish any evidentiary foundation for this assertion.

DATED: August 27, 2008

Respectfully submitted,

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: /s/ Edward J. McIntyre
NORMAN L. SMITH
EDWARD J. MCINTYRE
ALISON L. PIVONKA
Attorneys for Hansen Beverage Company

CERTIFICATE OF SERVICE

I caused the **OBJECTIONS TO EVIDENCE SUBMITTED IN SUPPORT OF LIVING ESSENTIALS' *EX PARTE* APPLICATION FOR DISCOVERY** to be served in the following manner:

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

Daniel T. Pascucci, Esq. (SBN 166780) Nathan R. Hamler, Esq. (SBN 227765) Mintz Levin Cohn Ferris Glovsky and Popeo PC 3580 Carmel Mountain Road, Suite 300 San Diego, CA 92130 Telephone: (858) 314-1510 Facsimile: (858) 314-1501 dpascucci@mintz.com nhamler@mintz.com Attorneys for Innovation Ventures LLC dba Living Essentials	

Manual Notice List

The following is the list of attorneys who are not on the list to receive e–mail notices for this case (who therefore require manual noticing). I served the following by email and Federal Express

Mark B. Mizrahi, Esq. (SBN 179384) Belasco Jacobs & Townsley, LLP 6100 Center Drive, Suite 630 Los Angeles, CA 90045 Telephone: (310) 743-1188 Facsimile: (310) 743-1189 mmizrahi@bjtlaw.com Attorneys for Innovation Ventures LLC dba Living Essentials	**Of Counsel:** Mark A. Cantor, Esq. Mark Lorelli, Esq. Thomas W. Cunningham, Esq. Brooks Kushman P.C. 1000 Town Center, 22d Floor Southfield, MI 48075 Telephone: (248) 358-4400 Facsimile: (248) 358-3351 mcantor@brookskushman.com mlorelli@brookskushman.com tcunningham@brookskushman.com

/s/ Edward J. McIntyre
EDWARD J. MCINTYRE

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Attorneys for HANSEN BEVERAGE COMPANY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HANSEN BEVERAGE COMPANY, a Delaware corporation, Plaintiff, v. INNOVATION VENTURES, LLC dba LIVING ESSENTIALS, a Michigan corporation, Defendant.	CASE NO. 08-CV-1166 IEG (POR) **SUPPLEMENTAL DECLARATION OF SERVICE** Hon. Louisa S. Porter

I, DEBORAH V.T. PIERSON, declare:

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Solomon Ward Seidenwurm & Smith, LLP, 401 B Street, Suite 1200, San Diego, California 92101.

On August 27, 2008, I also served a copy, including all exhibits, if any, of the following document(s):

1. **HANSEN BEVERAGE COMPANY'S OPPOSITION TO LIVING ESSENTIALS' *EX PARTE* APPLICATION FOR DISCOVERY;**

2. **DECLARATION OF RODNEY SACKS IN SUPPORT OF HANSEN BEVERAGE COMPANY'S OPPOSITION TO LIVING ESSENTIALS' *EX PARTE* APPLICATION FOR**

DISCOVERY;

3. DECLARATION OF WILLIAM N. KAMMER IN SUPPORT OF HANSEN BEVERAGE COMPANY'S OPPOSITION TO LIVING ESSENTIALS' *EX PARTE* APPLICATION FOR DISCOVERY;

4. DECLARATION OF EDWARD J. MCINTYRE IN SUPPORT OF HANSEN BEVERAGE COMPANY'S OPPOSITION TO LIVING ESSENTIALS' *EX PARTE* APPLICATION FOR DISCOVERY;

5. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF HANSEN BEVERAGE COMPANY'S OPPOSITION TO LIVING ESSENTIALS' *EX PARTE* APPLICATION FOR DISCOVERY; and

6. OBJECTIONS TO EVIDENCE SUBMITTED IN SUPPORT OF LIVING ESSENTIALS' *EX PARTE* APPLICATION FOR DISCOVERY

on the parties in this action listed in the attached Proof of Service List, which is incorporated herein by this reference, by the following means:

☐ **(BY MAIL)** I caused each such envelope to be sealed and placed for collection and mailing from my business address. I am readily familiar with the practice of Solomon Ward Seidenwurm & Smith, LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business mail is deposited with the postage thereon fully prepaid in the United States Postal Service the same day as it is placed for collection. I am aware that upon motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☐ **(BY PERSONAL SERVICE)** I caused each such envelope to be sealed and given to a courier authorized by our attorney service to receive documents for delivery on the same date. A proof of service signed by the authorized courier will be filed forthwith.

☒ **(BY FEDERAL EXPRESS)** I am readily familiar with the practice of Solomon Ward Seidenwurm & Smith, LLP for the collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

☐ **(BY FACSIMILE)** This document was transmitted by facsimile transmission from (619) 231-4755 and the transmission was reported as complete and without error. I then caused the transmitting facsimile machine to properly issue a transmission report, a copy of which is attached to this affidavit.

☒ **(BY EMAIL)** This document was transmitted by email from dpierson@swsslaw.com. The transmission was reported as complete and without error.

I declare that I am employed in the office of a member of this bar of this court, at whose direction this service was made.

Executed on August 27, 2008, at San Diego, California.

Deborah V.T. Pierson

DEBORAH V.T. PIERSON

PROOF OF SERVICE LIST

Mark B. Mizrahi, Esq. Belasco Jacobs & Townsley, LLP Howard Hughes Center 6100 Center Drive, Suite 630 Los Angeles, CA 90045 Telephone: (310) 743-1188 Facsimile: (310) 743-1189 mmizrahi@bjtlaw.com Attorneys for Innovation Ventures LLC dba Living Essentials	**Of Counsel:** Mark A. Cantor, Esq. Mark Lorelli, Esq. Thomas W. Cunningham, Esq. Brooks Kushman P.C. 1000 Town Center, 22d Floor Southfield, MI 48075 Telephone: (248) 358-4400 Facsimile: (248) 358-3351 mcantor@brookskushman.com mlorelli@brookskushman.com tcunningham@brookskushman.com Attorneys for Innovation Ventures LLC dba Living Essentials

CERTIFICATE OF SERVICE

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/s/ Edward J. McIntyre
EDWARD J. MCINTYRE